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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 09/665,442
Filing Date: September 19, 2000
Appellant(s): BROWN, STEPHEN J.

Christopher P. Maiorana
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed February 11, 2008 appealing from the Office action

mailed August 9, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings

which will directly affect or be directly affected by or have a bearing on the Board's decision in

the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

| 5,339,821 | Fujimoto | 8-1994 |
| 6,421,633 | Heinonen | 07-2002 |

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2.   Claim 47, 55-57, 77, 84, 91, 98, 105 and 107-110 are rejected under 35 U.S.C. 102(b) as

being anticipated by Fujimoto.

(A)   As per claim 47, Fujimoto teaches a system for monitoring a physiological

condition of a individual using a computer network (Fujimoto: Abstract), comprising:

(a) a central processing unit (A) having access to one or more databases and (B) configured to

perform operations according to monitoring application programming, the central processing

unit comprising (i) programming code configured to generate a script program-that collects

measurement data relating to the physiological condition of the individual7 and (ii) further

programming code configured to assiqn the script program to the individual; (Fujimoto: Col. 4,

Ln. 12-68), and

> (ii) further programming code configured to assign the script program to the
>
> individual (Fujimoto: Col. 8, Ln. 8-39);

> (b) a remote programming apparatus (i) connectable to a measuring device to receive

measurement data according to a collect command contained in the script program and (ii)

connectable to the central processing unit to transmit the measurement data to the central

processing unit according to a transmit command contained in the script program (Figure 1;

Col. 2, Ln. 32-55; Col. 4, Ln. 12-68 and Col. 8, Ln. 8-39)

> (c) a workstation connectable to the central processing unit to receive measurement data

so that a health care provider may review a report generated based on the measurement data

(Fujimoto: Figure 1 and Col. 2, Ln. 32-44).

(B)   As per claim 55, in Fujimoto the script program comprises one ore more queries and one

or more response choices for the individual (Fujimoto: Col. 4, Ln. 25-58).

(C)   As per claim 56, in Fujimoto the remote programming comprises a human interface

configured to receive one more responses from the individual to the queries to be communicated

to the central processing unit. (Fujimoto: Col. 4, Ln. 14-58 and Col. 8, Ln. 13-39)

(D)   As per claim 57, in Fujimoto the remote programming apparatus is sufficiently compact

to be hand-held and carried by the individual (Fujimoto: Figure 2 and Col. 2, Ln. 56-68).

(E)   As per claim 77, Fujimoto teaches a method of monitoring a physiological condition of

an individual using a computer network the computer network comprising a central processing

unit and a remote processing apparatus, the first processing unit having a script program stored

therein and the remote apparatus communicating with a measuring device that measures at least

one parameter indicative of the physiological condition of the individual (Fujimoto: Abstract and

Figures 1 and 2), the method comprising the steps of:

> (A)   storing a script assignment that associates the script program with the
> individual (Fujimoto: Col. 8, Ln. 8-39);
>
> (B)   connecting the first processing unit with the remote processing apparatus
> (Fujimoto: Col. 2, Ln. 32-55; Col. 3, Ln. 7-29 and Col. 7, Ln. 67-Col. 8, Ln. 8);
>
> (C)   transferring the script program from the central processing unit to the
> remote processing apparatus;
>
> (D)   executing the script program in the remote processing apparatus to collect

measurement data from the measuring device;

> (E)   transmitting the measurement data from the remote processing apparatus to the

central processing unit upon execution of a transmit command of the script program (Fujimoto:

Col. 4, Ln. 14-68 and Col. 8, Ln. 8-39).

(F)   As per claim 84, Fujimoto teaches a method of monitoring a physiological condition of an individual using a computer network the computer network comprising a central processing unit and a remote processing apparatus, the first central unit having a script program stored therein and the remote processing apparatus communicating with a measuring device that measures at least one parameter indicative of the physiological condition of the individual (Fujimoto: Abstract and Figures 1-2) , the method including:

transmitting the script program through a communication link from the central processing unit to the remote programming apparatus (Fujimoto: Col. 8, Ln. 8-39);

disconnecting the communication link after the script program has been transmitted (Fujimoto: Col. 8, Ln. 8-39);

collecting measurement data in the remote processing apparatus as received from the measuring device according to a collect command of the script program (Fujimoto: Col. 4, Ln. 14-68 and Col. 8, Ln. 8-39);

connecting the communication link between remote processing apparatus and the central processing unit after the measurement data has been collected (Fujimoto: Col. 6, Ln. 7-29 and Col. 8, Ln. 8-39); and

transmitting the measurement data from the remote processing apparatus to the central processing unit through the communications link (Fujimoto: Figure 1 and Col. 8, Ln. 8-39).

(G)   As per claims 91 and 98, this claim is substantially similar to Claim 84 and is therefore rejected in the same manner as Claim 84, which is set forth above.

(H)   As per claims 105 and 107-110, these claims are directed towards intermittently establishing a communication link with the central processing unit and (ii) disconnecting the communication link after a period of time after each establishment, this feature is taught in Fujimoto (Col. 8, Ln. 8-39). (Note: Fujimoto discloses sending communications between user side and the medical institution side (Fujimoto: Col. 8, Ln. 8-13) and it is inherent from this

teaching that the communication occurs intermittently because a telephone normally can only

handle a very limited number of links and if the communication link from the user side to the

medical institution side was not disconnected after some time it would not be possible in the

teachings of Fujimoto to use the telephone for any other purpose then to communicate with a

medical institution and normally a telephone is not used to solely and exclusively communicate

with only one other telephone link).

Claim Rejections - 35 USC § 103

3.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

4.   Claims 48-49 and 51-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over

US Patent Number 5,339,821 to Fujimoto as applied to Claim 47 above and in view of US Patent

Number 6,421,633 to Heinonen.

(A)   As per claim 48, Fujimoto does not teach that the physiological condition comprises

diabetes, the measuring device comprises a blood glucose measurement device, and the

measurement data comprises blood glucose data, however these features are well known in the

art as evidenced by Heinonen (Col. 1, Ln. 9-23-Col. 3, Ln. 53-Col. 4, Ln. 34). At the time of the

invention, it would have been obvious for one of ordinary skill in the art to have added these

aforementioned features from Heinonen to the system of Fujimoto with the motivation of

providing a patient with a means of regularly checking their blood glucose level using a self-

testing kit, as recited in Heinonen (Col. 1, Ln. 9-11).

(B)   As per claim 49, in the combined system of Fujimoto in view of Heinonen the

workstation further comprises script entry programming configured to receive input information

from the health care provider and (iii) communicate the information to the central processing unit
the central processing unit generates and assigns the script program to the individual (Fujimoto:
Col. 8, Ln. 8-21).

(C)   As per claim 51, in the combined system of Fujimoto in view of Heinonen the monitoring
application programming is configured to instruct the central processing unit to generate said
report based on the collected blood glucose data (Fujimoto: Col. 8, Ln. 35-40).

(E)   As per claim 52, in the combined system of Fujimoto in view of Heinonen the remote
processing apparatus further comprises a script interpreter configured to execute the script
program (Fujimoto: Col. 8, Ln. 8-39).

(F)   As per claim 53, in the combined system of Fujimoto in view of Heinonen the generating
and assigning of the script program comprises appending a unique patient identification code
associated with the individual to the script program for the individual (Fujimoto: Col. 8, Ln. 15-
21).

(G)   As per claim 54, in the combined system of Fujimoto in view of Heinonen the monitoring
application programming is configured to instruct the central processing unit to store the script
program in a database, the assignment of the script program including generating a pointer to the
script program for the individual and the pointer is stored in a look-up table associated with the
database (Fujimoto: Col. 8, Ln. 15-39).

(H)   As per claim 58, the combined method of Fujimoto in view of Heinonen the report
comprises a graph illustrating several measurements of the blood glucose data (Fujimoto: Col. 8,
Ln. 31-39).

5.   Claims 59-62 and 106 are rejected under 35 U.S.C. 103(a) as being unpatentable over US
Patent Number 5,339,821 to Fujimoto in view of US Patent Number 6,421,633 to Heinonen.

(A)   Claim 59 is substantially similar to Claim 47 and is therefore rejected on the same
basis as Claim 47, which is set forth above. Claim 59 does include the following feature

which is not taught by Fujimoto. Specifically, Fujimoto does not teach that the data relating to the physiological condition of the individual is blood glucose measurement data, however it is well known in the art to measure blood glucose data using a measuring device, as evidenced by Heinonen (Col. 1, Ln. 9-23-Col. 3, Ln. 53-Col. 4, Ln. 34). At the time of the invention, it would have been obvious for one of ordinary skill in the art to have added this aforementioned feature from Heinonen to the system of Fujimoto with the motivation of providing a patient with a means of regularly checking their blood glucose level using a self-testing kit, as recited in Heinonen (Col. 1, Ln. 9-11).

(B)   As per claim 60, in the combined system of Fujimoto in view of Heinonen the physiological condition including diabetes, the measuring device including a blood glucose measurement device(Fujimoto: Col. 2, Ln. 33-40).

(C)   As per claim 61, in the combined system of Fujimoto in view of Heinonen the workstation further comprises script entry programming for configured to enable the health care provider to enter information that is communicated to the central processing unit the central processing unit generates and assigns the script program to the individual (Fujimoto: Col. 8, Ln. 8-21).

(D)   As per claim 62, in the combined system of Fujimoto in view of Heinonen the monitoring application programming is further configured to instruct the central processing unit to generate said report based on the blood glucose data (Fujimoto: Col. 8, Ln. 35-40).

(E)   As per clam 106, this claim is directed towards intermittently establishing a communication link with the central processing unit and (ii) disconnecting the communication link after a period of time after each establishment, this feature is taught in Fujimoto (Col. 8, Ln. 8-39). (Note: Fujimoto discloses sending communications between user side and the medical institution side (Fujimoto: Col. 8, Ln. 8-13) and it is inherent from this teaching that the communication occurs intermittently because a telephone normally can only handle a very limited number of links and if the communication link from the user side to the medical institution side was not disconnected after some time it would not be possible in the teachings of Fujimoto to use the telephone for any other purpose then to communicate with a medical

institution and normally a telephone is not used to solely and exclusively communicate with only one other telephone link).

6.   Claims 78-83 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Number 5,339,821 to Fujimoto as applied to Claim 77 above and in view of US Patent Number 6,421,633 to Heinonen.

(A)   As per claim 78, Fujimoto does not teach that the physiological condition comprises diabetes, the measuring device comprises a blood glucose measurement device, and the measurement data comprises blood glucose data, however these features are well known in the art as evidenced by Heinonen (Col. 1, Ln. 9-23-Col. 3, Ln. 53-Col. 4, Ln. 34). At the time of the invention, it would have been obvious for one of ordinary skill in the art to have added these aforementioned features from Heinonen to the method of Fujimoto with the motivation of providing a patient with a means of regularly checking their blood glucose level using a self-testing kit, as recited in Heinonen (Col. 1, Ln. 9-11).

(B)   As per claim 79, the combined method of Fujimoto in view of Heinonen further comprising the step of: generating a report in the central processing unit based upon the blood glucose data (Fujimoto: Col. 2, Ln. 33-40).

(C)   As per claim 80, the combined method of Fujimoto in view of Heinonen further comprises transmitting the report to a workstation connected with the first processing unit (Fujimoto: Col. 8, Ln. 8-39).

(D)   As per claim 81, in the combined method of Fujimoto in view of Heinonen the report comprises a graph illustrating several measurements of the blood glucose data (Fujimoto: Col. 8, Ln. 31-39).

(E)   As per claim 82, the combined method of Fujimoto in view of Heinonen further comprises collecting the measurement data by the remote processing apparatus from the measuring device according to a collect command of the script programs received from the central processing unit (Fujimoto: Col. 8, Ln. 8-39).

(F)   As per claim 83, the combined method of Fujimoto in view of Heinonen further comprises generating a message prompting the individual to connect the blood glucose measurement device to the remote processing apparatus; (Fujimoto: Col. 3, Ln. 7-29 and Col. 7, Ln. 67-Col. 8, Ln. 8).

7.   Claims 85-90 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Number 5,339,821 to Fujimoto as applied to Claim 84 above and in view of US Patent Number 6,421,633 to Heinonen.

(A)   As per claim 85, Fujimoto does not teach that the physiological condition comprises diabetes, the measuring device comprises a blood glucose measurement device, and the monitoring device measurement data comprises blood glucose data, however these features are well known in the art as evidenced by Heinonen (Col. 1, Ln. 9-23-Col. 3, Ln. 53-Col. 4, Ln. 34). At the time of the invention, it would have been obvious for one of ordinary skill in the art to have added these aforementioned features from Heinonen to the method of Fujimoto with the motivation of providing a patient with a means of regularly checking their blood glucose level using a self-testing kit, as recited in Heinonen (Col. 1, Ln. 9-11).

(B)   As per claim 86, the combined method of Fujimoto in view of Heinonen further comprises generating a report in the central processing unit based upon the blood glucose data (Fujimoto: Col. 8, Ln. 8-39).

(C)   As per claim 87, the combined method of Fujimoto in view of Heinonen further comprises the step of: transmitting the report to a workstation connected with the central processing unit (Fujimoto: Col. 8, Ln. 7-21).

(D)   As per claim 88, in the combined method of Fujimoto in view of Heinonen the report comprises a graph illustrating several measurements of blood glucose data measurements (Fujimoto, Col. 8, Ln. 31-39).

(E)   As per claim 89, this claim is substantially similar to Claim 83 and is therefore rejected on the same basis as Claim 83, which is set forth above,

(F)   As per claim 90, wherein the transmitting of the blood glucose data from the remote processing apparatus to the central processing unit is according to a transmit command of the script program (Fujimoto: Col. 8, Ln. 31-39).

8.   Claims 92-97 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Number 5,339,821 to Fujimoto as applied to Claim 91 above and in view of US Patent Number 6,421,633 to Heinonen.

(A)   As per claim 92, Fujimoto does not teach that the physiological condition comprises diabetes, the measuring device comprises a blood glucose measurement device, and the monitoring device measurement data comprises blood glucose data, however these features are well known in the art as evidenced by Heinonen (Col. 1, Ln. 9-23-Col. 3, Ln. 53-Col. 4, Ln. 34). At the time of the invention, it would have been obvious for one of ordinary skill in the art to have added these aforementioned features from Heinonen to the storage device of Fujimoto in with the motivation of providing a patient with a means of regularly checking their blood glucose level using a self-testing kit, as recited in Heinonen (Col. 1, Ln. 9-11).

(B)   As per claim 93, the combined readable storage device of Fujimoto in view of Heinonen comprises generating a report in the central processing unit based upon the collected blood glucose measurement data (Heinonen (Col. 1, Ln. 9-23-Col. 3, Ln. 53-Col. 4, Ln. 34). The motivation for making this modification to the teachings of Fujimoto is the same as set forth above, in the rejection of Claim 92.

(C)   As per claim 94, the combined readable storage device of Fujimoto in view of Heinonen comprises transmitting the report to a workstation connected with the central processing unit (Fujimoto: Col. 8, Ln. 8-39).

(D)   As per claim 95, the combined readable storage device of Fujimoto in view of Heinonen comprises a graph illustrating several measurements blood glucose data measurements Heinonen (Col. 1, Ln. 9-23-Col. 3, Ln. 53-Col. 4, Ln. 34). The motivation for making this modification to the teachings of Fujimoto is the same as set forth above, in the rejection of Claim 92.

(E)   As per claim 96, the combined readable storage device of Fujimoto in view of Heinonen comprises collecting the blood glucose data by the remote apparatus from the measuring device according to a collect command of one or more script programs received from the central processing unit Heinonen (Col. 1, Ln. 9-23-Col. 3, Ln. 53-Col. 4, Ln. 34). The motivation for making this modification to the teachings of Fujimoto is the same as set forth above, in the rejection of Claim 92.

(F)   As per claim 97, the combined readable storage device of Fujimoto in view of Heinonen comprises prompting for device connection to the remote processing apparatus; and connecting the remote processing apparatus to interface with the blood glucose measurement device Heinonen (Col. 1, Ln. 9-23-Col. 3, Ln. 53-Col. 4, Ln. 34). The motivation for making this modification to the teachings of Fujimoto is the same as set forth above, in the rejection of Claim 92.

9.   Claims 99-104 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Number 5,339,821 to Fujimoto as applied to Claim 91 above and in view of US Patent Number 6,421,633 to Heinonen.

(A)   As per claim 99, Fujimoto does not teach that the physiological condition comprises diabetes, the measuring device comprises a blood glucose measurement device, and the monitoring device measurement data comprises blood glucose data, however these features are well known in the art as evidenced by Heinonen (Col. 1, Ln. 9-23-Col. 3, Ln. 53-Col. 4, Ln. 34). At the time of the invention, it would have been obvious for one of ordinary skill in the art to have added these aforementioned features from Heinonen to the storage device of Fujimoto in with the motivation of providing a patient with a means of regularly checking their blood glucose level using a self-testing kit, as recited in Heinonen (Col. 1, Ln. 9-11).

(B)   As per claim 100, the combined storage device of Fujimoto in view of Heinonen comprises generating a report in the central processing unit based upon the collected blood glucose measurement data (Fujimoto: Col. 8, Ln. 35-40).

(C)   As per claim 101, the combined storage device of Fujimoto in view of Heinonen
comprises transmitting the report to a workstation connected with the central processing unit
(Fujimoto: Col. 8, Ln. 8-38).

(D)   As per claim 102, the combined readable storage device of Fujimoto in view of Heinonen
comprises a graph illustrating several measurements blood glucose data (Fujimoto: Col. 8, Ln.
31-39)

(E)   As per claim 103, the combined storage device of Fujimoto in view of Heinonen
comprises a step of generating a message prompting for device connection to the remote
processing apparatus (Fujimoto: Col. 3, Ln. 7-29 and Col. 7, Ln. 63-Col. 8, Ln. 7).

(F)   As per claim 104, the combined storage device of Fujimoto in view of Heinonen

comprises transmitting the measurement data from the remote apparatus to the central processing

unit is according to a transmit command of the one script (Fujimoto: Col. 4, Ln. 14-68 and Col.

8, Ln. 8-38).

(10) Response to Arguments

(1)   Applicants argue that Fujimoto does not disclose a programming code which generates a

script program which also includes a collect and transmit command. However, the Office would

like to point out that Fujimoto does disclose these very features (Col. 4, Ln. 14-56). The cited

portions of Fujimoto do in fact disclose a script program with a collect and transmit command

and the script program is derived from programming code. Specifically, in Fujimoto (Col. 4, Ln.

14-21) when the system asks the user "do you want to measure the blood pressure and the pulse"

it is inherent that this question is asked to the user as a result of programming code. The above

portion cited of Fujimoto also shows that these questions comprise a script program because

questions are posed to a user in a form of a script. On column 4, lines 18-25 of Fujimoto it is

stated that the user enters answers to these questions posed by the script program and at least

some of the possible inputs are "Yes" and "No". Since the system of Fujimoto accepts these answers from the users of its program it is inherent that Fujimoto contains a collect command to collect the replies of the users.

(2)   The Office would like to point out that independent claims 47, 91 and 98 contain the phrase "configured to perform." The Office takes the position that any limitations contained in the claims after this phrase are non-functional descriptive material. Mainly, these limitations are not merely designed so that the claimed steps or processes can occur but the claims are not actually performing the claimed functions or processes.

(11) Related Proceedings Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Vivek Koppikar

/Vivek D Koppikar/

Examiner, Art Unit 3626

Conferees:

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